

SYNOPSIS

PERSONAL INCOME TAX -- TAXPAYERS' FAILURE TO CARRY BURDEN OF PROOF -- The failure of taxpayers to articulate adequate grounds in their petition for reassessment justifying their claim, combined with their failure to appear at a hearing and to present any evidence respecting their claim, will result in a denial of relief to the taxpayers. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On June 15, 2002, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a personal income tax assessment against the Petitioners. The assessment was for tax year 1998, for tax, interest, computed through June 15, 2002, and additions to tax. Written notice of this assessment was served on the Petitioners.

Thereafter, by mail postmarked July 2, 2002, the Petitioners timely filed a petition for reassessment. At the time that they filed their petition for reassessment, the Petitioners remitted the tax due, under protest, to stop the running of interest on the assessment. Accordingly, the petition for reassessment has been converted to a petition for refund as to the amount remitted by the Petitioners, pursuant to the provisions of W. Va. Code § 11-10-8(c) [2002], while it remains a petition for reassessment with respect to the interest and additions to tax assessed.

By letter dated July 10, 1992, the Petitioners were advised that, because they requested that the hearing on the petition for reassessment be held in an out-of-town location, the hearing was being continued until the next out-of-town docket.

Subsequently, notice of a hearing on the petition was sent to the Petitioner. The notice of hearing to the Petitioners went unclaimed. There was no appearance on behalf of the Petitioners when the hearing was convened. However, the hearing was held without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. As a result of a comparison of the figures stated on the Petitioners' West Virginia personal income tax return, Form 104, to the figures contained on the Petitioners' federal income tax return, Form 1040, it was determined that the Petitioners showed less adjusted gross income on their West Virginia return than as shown on their federal return or as determined by the Internal Revenue Service.

2. Of the difference, almost all was attributable to taxable dividend income received by them.

3. The remaining of the difference was attributable to an Individual Retirement Account deduction, which was reduced.

4. The additional tax on the amount not shown on their West Virginia personal income tax return was a small amount.

DISCUSSION

For purposes of the West Virginia personal income tax, adjusted gross income of West Virginia residents is equal to their adjusted gross income for purposes of United States income tax, subject to certain modifications specified by statute. W. Va. Code § 11-21-12(a). In this matter, the State Tax Commissioner compared the Petitioners' adjusted gross income as reported to the federal government to that reported to her. From this comparison, she was able to determine that the Petitioners had not reported all of their income on their West Virginia personal income tax return. The amount not reported was as set forth above.

Because the Petitioners did not appear at the hearing, there is no evidence in the record to show why they did not show the dividend income on their West Virginia income tax return that was shown on their federal income tax return. Similarly, there is no evidence to show why they

took an IRA deduction of a larger amount on their West Virginia income tax return, when they were allowed only a smaller deduction amount on their federal income tax return.

In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment and a petition for refund, the burden of proof is upon the petitioners to show that any assessment of tax against them is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003). The Petitioners in this matter have failed to carry their burden of proving that the inclusion of the dollar amount in their adjusted gross income for purposes of the West Virginia personal income tax is erroneous, unlawful, void or otherwise invalid. Thus, they are not entitled to a refund of the amount which was paid under protest.

With respect to the assessment of interest, which is challenged by the Petitioners, there is no statutory provision permitting this Office to waive statutory interest. Consequently, this Office has no authority to waive any interest.

With respect to the assessment of additions to tax, which are challenged by the Petitioners, there has been no showing of why the additions to tax should be waived. Additions to tax may be waived only upon a showing of reasonable cause and that there was no willful neglect. The Petitioners have presented no evidence which would show that their failure to pay the tax was due to reasonable cause and that they were not guilty of willful neglect.*

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

* The Petitioners' averment in their petition for reassessment, that their records were destroyed in a flood, is not a sufficient showing of reasonable cause for their failure to pay the tax due, nor does it demonstrate a lack of willful neglect on their part. The Petitioners were apparently in possession of sufficient records to allow them to file their tax return. It was their failure to report the full amount of their income and to pay all of the tax they owed at the time of filing that triggered the accrual of the additions to tax. The flood that resulted in the loss of their records must have occurred after the event that triggered the accrual of additions to tax.

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioners to show that any assessment of tax against them is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

2. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the petitioners to show that they are entitled to a refund of the amount they claim is due and owing to them. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

3. The Petitioners in this matter have failed to carry their burden of showing that they are entitled to a refund of the amount they paid as income tax.

4. There is no statutory authority permitting the West Virginia Office of Tax Appeals to waive interest imposed pursuant to W. Va. Code § 11-10A-17.

5. The Petitioners have failed to show that their failure to pay the amount due and owing was due to reasonable cause and not due to any willful neglect on their part.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the portion of the personal income tax assessment issued against the Petitioners for tax year 1998, for interest, computed through June 15, 2002, and additions to tax, should be and is hereby **AFFIRMED**.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioners' petition for refund, wherein they seek to be refunded personal income tax for tax year 1998, paid under protest, is hereby **DENIED**.